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No. 629

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

GRAIN ELEVATOR, FLOUR AND FEED MILL WORKERS, INTERNATIONAL LONGSHOREMEN ASSOCIATION, LOCAL 418, AFL-CIO,

Petitioner,

vs.

ROSS M. MADDEN, Regional Director of the Thirteenth Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Courts of Appeals for the Seventh Circuit entered in this case on July 15, 1964.

OPINIONS BELOW

The orders of the United States District Court for the Northern District of Illinois, Eastern Division, appear in the Record* at Union App. pp. 38-40; 54-57; 94-96; 112-115; 310-313. The opinion of the Court of Appeals, printed in Appendix A hereto, *infra*, pp App. 1-18, is reported in 334 F.2d 1014. The order of the Court of Appeals denying the petition for rehearing is printed in Appendix B, *infra*, p. App. 19.

JURISDICTION

The orders of the District Court were entered on June 3, June 14, August 14, September 24, and October 31, 1963. The judgment of the Court of Appeals was entered on July 15, 1964. The order of the Court of Appeals denying the petition for rehearing was entered on August 20, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Where a federal statute (18 U.S.C. §3692) expressly provides a right of trial by jury in all contempt cases arising under federal laws pertaining to injunctions which grow out of a labor dispute and Rule 38 of the Rules of Civil Procedure guarantees the right of jury trial whenever a federal statute so provides, may a district court deny a timely demand for trial by jury made by a labor organization charged with contempt of an injunction which had been issued under §10(l) of the Labor-Management Relations Act?

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* Separate appendices were filed in the Court of Appeals by the appellants and the appellee. In this petition for certiorari, references to the record are indicated as follows: "Union App." refers to appellants' appendix below; "Board App." refers to appellee's appendix below.

2. In view of §6 of the Norris-LaGuardia Act (29 U.S.C. §106), may a labor organization be adjudged in contempt by reason of the acts of some members whose conduct is not authorized or ratified by the labor organization?

3. When a labor organization has assets of $16,000 and prospective monthly dues income of about $1400, is the imposition of fines approximating $42,000 excessive in violation of the Eighth Amendment to the Constitution of the United States?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The provision of the Constitution of the United States which is involved is the Eighth Amendment. The statutes involved are the Labor-Management Relations Act, 1947, 29 U.S.C. §141 *et seq.*; the Norris-LaGuardia Act, 29 U.S.C. §101 *et seq.*; Rule 38 of the Federal Rules of Civil Procedure; and 18 U.S.C. §3692. Pertinent provisions of the statutes are set forth in Appendix C, *infra*, p. App. 20.

STATEMENT

On May 29, 1963 the District Court for the Northern District of Illinois entered a temporary restraining order (Union's App. 19-21) against the petitioner (herein called Local 418) in a proceeding initiated by a petition (Union App. 3-14) of the Regional Director of the National Labor Relations Board which invoked the jurisdiction of the District Court under §10(l) of the Labor-Management Relations Act. Local 418 is a union of some 244 members employed by twelve separate employers operating grain elevators in Chicago. Only 75 of its members are employed by Continental Grain Company (Union App. 319), which is the only employer involved in these proceedings. The

order restrained Local 418 from inducing Continental's employees to withhold their services for the purpose of causing Continental to cease doing business with Upper Lakes Shipping, Ltd., a Canadian shipowner whose vessels carried grain from Continental's elevator in Chicago to destinations in Canada. The order also directed Local 418 to withdraw any requests it might previously have made to the employees to refuse to load grain on Upper Lakes ships.

Shortly after the temporary restraining order was served on him, Jack E. Connor, president of Local 418, ordered the Continental employees—in the presence of Continental officials and a United States marshal—to perform their duties of loading grain on an Upper Lakes vessel. (Union App. 129, 137, 151, 159-160, 171). Nevertheless, the employees, who had also been served with copies of the court's order, refused to perform the ship-loading operations when so directed by their supervisors. (Union App. 152, 153, 156-157). The Regional Director of the National Labor Relations Board filed a petition in civil contempt against Local 418 (Union App. 21-28), and the court ordered Local 418 to show cause why it should not be held in contempt. (Union App. 28-29).

Local 418 filed an answer and demanded a trial by jury. (Union App. 30-32). The district court denied the jury demand although the provisions of 18 U.S.C. §3692 were expressly brought to the court's attention. (Union App. 119-120). The district judge conducted a trial without a jury and on June 3, 1963 he entered an order holding Local 418 in contempt and imposed upon Local 418 a fine of $1,000. (Union App. 38-40).

On June 14, 1963, the district court entered a temporary injunction against Local 418, similar to the order of May 29, except that it contained an additional paragraph pro-

hibiting *members* of Local 418 from refusing in concert to perform services for Continental. (Union App. 54-57). On August 6, the district court on its own motion entered another order striking and expunging the aforesaid paragraph *nunc pro tunc* from the order of June 14. (Union App. 77-78). On that day the Regional Director filed another petition in civil contempt against Local 418 (Union App. 67-75). Local 418 filed an answer thereto again demanding a trial by jury. (Union App. 83-85). The court denied the jury demand. (Union App. 195-196). After a trial without a jury the district judge entered an order (Union App. 94-96) finding Local 418 in contempt, on a showing that Continental's employees had refused to load grain on an Upper Lakes vessel on June 17, 20 and 21, 1963. The district judge imposed upon Local 418 a fine of $100 a day, retroactive from June 17 to August 14. The order provided that if Local 418 showed within 30 days that it had purged itself of contempt the fine would be remitted; but if not, a daily fine of $200 a day commencing August 14, 1963 would be imposed.

On August 20, 1963, Local 418 filed a motion to remit the fine and to show of record that the mandatory injunction had been complied with. (Union App. 97-102). Local 418 showed that it sent a registered letter on August 16. 1963, to each member employed at Continental advising the members, in the language of the mandatory injunction, that any requests that might have been made to them to refrain from loading grain on Upper Lakes vessels were withdrawn; the letter further stated that the men were free to perform any and all services for Continental. A copy of the letter was also posted on the Continental bulletin board, and it was read aloud at a special meeting called by Local 418 for those of its members who were employed by Continental. (Union App. 97-102). The Re-

gional Director filed an opposition to the motion. (Union App. 104-108). On September 17, 1963 the district court received Local 418's evidence of compliance, and then, over objection (Union App. 275), received evidence presented by the Regional Director concerning additional instances of alleged refusals by Continental's employees to load an Upper Lakes vessel. At the conclusion of the hearing, the district judge stated that the evidence showed that the conduct of Jack E. Connor, president of Local 418, was "commendable" and that Connor had purged himself of any contemptuous conduct, but that this was not "union conduct"; that "the past concerted activities for which each employee member has been punished remains unameliorated . . . they, as individual union members, have done nothing to show this Court that their activity is no longer concerted, or that they intend Jack Connor's present position also to constitute the action and the position of the labor union . . ." (Union App. 292-293). The court announced that it would deny the motion to remit the fine. Although the Regional Director had filed no pleading seeking imposition of greater fines, the district judge stated his own desire to enter an order increasing the fines. (Board App. 146-147). Local 418 filed an opposition to the proposed order, and again demanded a jury trial. (Union App. 110-111). The court denied the jury demand (Board App. 150) and entered an order (Union App. 112-113) on September 24 increasing the fine to $500 a day retroactive to September 17. The same order stayed the running of the fine as of September 20, when the Upper Lakes vessel had left Chicago. (Union App. 115). On October 14, 1963, the Regional Director filed a motion to reinstate and increase the fines, alleging new refusals by

Continental employees to load an Upper Lakes vessel. (Union App. 296-302). The answer filed by Local 418 once again demanded a jury trial. (Union App. 302-309). The court denied the jury demand (Union App. 322) and after a trial without a jury it entered an order on October 31 which imposed upon Local 418 a fine of $500 a day retroactive to October 29, and additionally imposed a retroactive fine of $3,000 a day for the days of October 4, 7, 11 and 26, 1963. (Union App. 310-211).

The fines imposed upon Local 418 totalled $42,800 as of November 27, 1963. On that date Local 418 showed total assets of approximately $16,000, and prospective monthly income from union dues of $1,460. (Union App. 247, 316-321, 390, 391).

Appeals followed and were consolidated in the United States Court of Appeals for the Seventh Circuit, which affirmed the District Court.

REASONS FOR GRANTING THE WRIT

I.

IMPROPER DENIAL OF TRIAL BY JURY

A federal statute, 18 U.S.C. § 3692, in the broadest language provides the right to a jury trial "In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute ...." In the case at bar, each condition of § 3692 was fully and literally present. These were cases of contempt within the scope of § 3692, for § 10(l) of the Labor-Management Relations Act under which they arose, is a law of the United States governing the issuance of injunctions or restraining orders; and the case involved or grew out of a labor dispute. Rule 38 of the Rules of Civil Procedure preserves inviolate the right of jury trial whenever it exists by reason of a federal statute. Nevertheless, the District Court denied the demands for trial by jury. (Union App. 119-120, 195-196; Board App. 150; Union App. 322).

In affirming the District Court, the Court of Appeals held that § 3692 is inapplicable to this proceeding. The Court of Appeals referred to §10(h) of the Labor-Management Relations Act. (*Opinion, infra,* App. p. 11). But § 10(h) does not deal with contempt proceedings, nor does it deal with the mode of trial, whether by court or by jury. It confers jurisdiction on courts sitting in equity, only in respect to the granting of temporary relief or a restraining order, or in proceedings to enforce an order of the Board, without limitation by the provisions of Norris-LaGuardia. There is no reference in § 10(h) to proceedings to enforce injunctions. In any event, the real issue is not whether Local 418 was entitled to a jury trial under Norris-

LaGuardia. *The issue is whether Local* 418 *was entitled to a jury trial under the far broader provisions of* § 3692. Nothing in the Labor-Management Relations Act withholds the application of § 3692 to contempt cases. Indeed, § 3692 was enacted a year after the Labor-Management Relations Act, so that it is manifestly incorrect to read into the earlier Labor-Management Relations Act any intention to withhold the jury trial rights contained in the later statute.

A comparison of § 11 of Norris-LaGuardia with the language of § 3692 clearly reveals the intent of Congress to broaden the right to jury trial in labor contempt cases. The repealed language of § 11 of Norris-LaGuardia provided the jury guarantee only in cases of contempt arising under *that* Act. When Congress repealed § 11 of Norris-LaGuardia, and enacted 18 U.S.C. § 3692, the broadest possible language was employed: "In *all* cases of contempt arising under *the laws* of the United States . . . ." (Emphasis supplied).

The courts below denied Local 418 a right to jury trial which a plain and broadly phrased statute guarantees. Rule 38 of the Rules of Civil Procedure forbids judicial repeal of statutes guaranteeing a jury trial. This Court has expressed repeatedly the policy which favors the recognition of the right to jury trials and to resolve doubts in favor of jury trials. *Simler* v. *Conner*, 372 U.S. 221; *Dairy Queen, Inc.* v. *Wood*, 369 U.S. 469; *Beacon Theatres, Inc.* v. *Westover*, 359 U.S. 500; *Dimick* v. *Schiedt*, 293 U.S. 474, 486.

The opinion of the Court of Appeals cites only one case on the propriety of denial of trial by jury—*N. L. R. B.* v. *Red Arrow Freight Lines*, 193 F. 2d 979. That case however involved enforcement of a Board order in a court of appeals, an issue not involved in the case at bar.

The present case is one of first impression in this Court and we respectfully submit that the substantial issue warrants the granting of certiorari.

II.

UNION NOT LIABLE FOR UNAUTHORIZED CONDUCT OF MEMBERS

Under the Norris-LaGuardia Act, Local 418, a labor organization, cannot be held responsible for the acts of some members without proof of *"actual participation"* or *"actual authorization"*.

Section 6 of the Norris-LaGuardia Act is explicit:

> "Sec. 6. No officer or member of any association or organization and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of *actual* participation in, or *actual* authorization of, such acts, or of ratification of such acts after *actual* knowledge thereof." (Emphasis supplied)

In construing § 6 the Supreme Court said in *United Brotherhood of Carpenters* v. *U. S.*, 330 U.S. 395, at page 403:

> "We need not determine whether § 6 should be called a rule of evidence or one that changes the substantive law of agency. We hold that its purpose and effect was to relieve organizations, whether of labor or capital, and members of those organizations from liability for damages or imputation of guilt for lawless acts done in labor disputes by some individual officers or members of the organization, without clear proof that the organization or member, charged with responsibility for the offense actually participated, gave prior authorization, or ratified such acts after actual knowledge of their perpetration."

Local 418, a labor organization, was adjudged in civil contempt not because of its own conduct as an organization but because the unauthorized acts of some of its members were held by the District Court to constitute union action.

The record showed that promptly after the temporary restraining order was issued, Local 418's president ordered Continental's employees to load the Upper Lakes vessel (Union App. 158, 159, 166, 171) and he stated that the union intended to comply with the court's order. (Union App. 171). Connor, the union president, subsequently notified each Continental employee by letter, by notice on the company bulletin board, and by anouncement at a special meeting, that the union desired to comply, that any inducements were withdrawn, and that the men were free to perform any and all work. (Union App. 98-101). The injunction forbade Local 418 to induce work stoppages. Local 418 complied. The injunction forbade Local 418 to withdraw any prior inducements. Local 418 complied. The injunction did not command Local 418 to get ships loaded, but Local 418 was held in contempt because ships were not loaded. The District Court had stricken on its own motion (Union App. 78) the only provision of the injunction (Union App. 54-57) that applied to members of Local 418. Yet, when some members—without Local 418's participation or authorization—refused to load ships, Local 418 was held in contempt. This was not a case where there was even a suspicion of bad faith or subterfuge on the part of the union president. The District Judge himself so acknowledged at the conclusion of the September 17 hearing, when he referred to Connor's conduct as being "commendable". (Union App. 292-293). On that occasion the District Court stated the erroneous position that the conduct of the employees in refusing to load Upper Lakes ships constituted action of the union. The District Court

treated the acts of the responsible official of Local 418 as individual action, while treating the unauthorized acts of some members as union action.

The effect of the District Court's orders is directly contrary to the law as set forth in § 6 of Norris-LaGuardia and by this Court, and warrants the granting of certiorari. The Court of Appeals apparently holds that § 6 of Norris-LaGuardia was not applicable because of § 10(h) of the Labor-Management Relations Act. (Opinion, Appendix A, *infra*, App. p. 11). But § 10(h) merely grants to the courts jurisdiction to issue injunctions; it makes no reference and has no application to contempt proceedings. To interpret § 10(h) as repealing § 6 of Norris-LaGuardia in contempt proceedings is to repeal Norris-LaGuardia by implication, which this Court has held may not be done. *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195 (1962). The judgment of the Court of Appeals affirming the orders of the District Court appears to be in conflict also with the decisions in which this Court for many years has recognized that a labor organization is a self-contained legal entity wholly distinct from its individual members and not to be bound by the unauthorized acts of individual members. *United Mine Workers* v. *Coronado Co.*, 259 U.S. 344, 385-386, 393, 395; *U. S.* v. *White*, 322 U.S. 694, 701-703; *Machinists* v. *Street*, 367 U.S. 740, 808; *Machinists* v. *Gonzalez*, 356 U.S. 617, 619.

The serious consequences of the course followed by the District Court becomes apparent from the following statements of the District Court:

> "Since this was union action. Our Marshall is able to accommodate 244 men. They will stand committed until the fine is paid. The question here is not the payment of fine. The question here is whether or not they can make this bond for appeal.
>
> • • •

> "I am also indicating that if the fine becomes final, failure to make the supersedeas bond, then the members of union will stand committed to a common jail until the fine is made or until the fine is paid, all 244 members." (Union App. 403-404).

After holding the union liable for the acts of a minority group of the membership and imposing large fines on the union without proof of its authorization or ratification, the court then threatened to incarcerate *all* of the 244 union members if the union failed to pay the fines or post bond.

The pernicious consequences of the decision below are apparent. First, a union is held liable for the acts of individual members or of a minority group of members without proof of authorization or ratification. Second, individual members of a union become subject to personal financial responsibility and loss of liberty for the simple failure of their union to pay a fine imposed upon the union, even though the particular individuals may never have been involved in the slightest in the dispute. Thus the individual union member becomes liable not only for what his union has done, but also for what dissident groups within the union may have done without his authorization, ratification or even knowledge.

The importance of the position of labor organizations in contemporary society requires no elaboration. The judgment below, which judicially repeals an important protection of the Norris-LaGuardia Act and which also departs from established law concerning labor unions as legal entities, raises substantial questions which affect vitally the status and relationship of many thousands of labor organizations and their millions of members, and warrants this Court's review.

III.

EIGHTH AMENDMENT VIOLATED BY EXCESSIVE FINES

The record shows that Local 418 had a net worth of approximately $16,000 and that its prospective monthly income from membership dues was approximately $1,400. (Union App. 247, 316-321, 390). As of November 27, 1963 the fines amounted to $42,800. This Court held in *United States* v. *United Mine Workers of America*, 330 U.S. 258, 304 (1947) that a court must "*in fixing the amount of a fine to be imposed as a punishment or as a means of securing future compliance, consider the amount of defendant's financial resources and the consequent seriousness of the burden to that particular defendant.*" (Emphasis supplied). The fines in the case at bar are excessive, as they so far exceed Local 418's resources and prospective income as to threaten destruction of the union. Since only a fraction of Local 418's members were employed by Continental, and the majority of the members were employed at other plants not involved in these proceedings, the unjust consequence of the fines would be to cripple or wreck the union that must serve these members as well as those who work at Continental.

The record shows that the initial fine of $100 a day was double the income of Local 418; the fine of $200 a day was four times the income; the fine of $500 a day was ten times the income; and the fine of $3,000 a day was sixty times greater than the income of Local 418. The total amount of the fines was an amount two and one-half times greater than the entire net worth of Local 418. Clearly the fines were excessive.

The Court of Appeals held that Local 418 could not complain because the large fines were "as a consequence of the impact of its defiance of the orders." (Opinion, Appendix

A. App. 15). By this re[illegible]ning the protection of the Eighth Amendment would [illegible] made meaningless, since it would be withheld from those who are found guilty and who need protection against excessive fines; its protection would be granted only to those found not guilty and who are not fined at all.

It is significant that a substantial portion of these large fines resulted from the fact that the District Court imposed several unconditional fines for alleged contempts which had occurred prior to the issuance of the court orders. For example, the order of October 31, 1963 (Union App. 310-311) imposed an unconditional fine totalling $12,000 ($3,000 per day) for conduct which was alleged to have occurred on October 4, 7, 11, and 26, 1963. Since the District Court proceedings were all in civil contempt, the District Court improperly imposed punitive or criminal penalties. Such penalties may only be imposed in proceedings which are instituted and tried as for criminal contempt, only coercive sanctions being appropriate in civil contempt. *Gompers* v. *Bucks Stove & Range Co.*, 221 U.S. 418, 444 (1911); *Nye* v. *United States*, 313 U.S. 33, 42-43 (1941); *Parker* v. *United States*, (1 Cir. 1946) 153 F.2d 66, 70-71; *Flight Engineers Int. Assn.* v. *Eastern Air Lines, Inc.*, (5 Cir. 1962), 301 F.2d 756; *Cliett* v. *Hammonds* (5 Cir. 1962), 305 F. 2d 565, 569-570. This issue was raised below but it was not discussed in the opinion of the Court of Appeals. As all of the orders were affirmed, however, it is clear that the Seventh Circuit in the case at bar has affirmed the imposition of punitive sanctions in these civil proceedings contrary to the applicable decisions of this Court warranting review by this Court.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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